IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 7233 (SS) OF 2001

Smt. Nandi Joshi, W/o Late Sri Devki Nandan Joshi, presently posted as Assistant Teacher, Primary School, Suala, District, Champawar. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary, Education Department, Dehradun Uttaranchal.
2. Director of Education (Basic) Uttaranchal Shasan, Dehradun.
3. Regional Assistant Director of Education (Basic) Kuman Mandal, Nainital. .....Respondents.

Sri K.N. Joshi, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents to give the service benefits to the petitioner since 1978. The petitioner has further prayed for a writ of Mandamus directing the respondent to give service benefits to the petitioner in compliance of the Govt. Order dated 20.07.1979.

Briefly stated, the petitioner was initially appointed as Gram Sevika. Government took a decision in the year, 1967 to abolish the post of Gram Sevika and the service of the Gram Sevika was absorbed in Education Department from Planning Department. The petitioner was appointed as Assistant Teacher vide appointment letter dated 22.11.1967. In compliance of that letter, the petitioner joined her service in Girls Primary School, Barakot, Distt. Almora on 01.12.1967.

On 20.07.1979, the State of U.P. issued a Govt. Order. Relevant portion of the said G.O. is to the following effect:-

"मान्यता प्राप्त गैर सरकारी जूनियर हाईस्कूल के प्रशिक्षित अध्यापक/अध्यापिकाओं के प्रशिक्षण की ब्यवस्था किये जाने के संबंध में अतिरिक्त शिक्षा निदेशक (बेसिक) के अर्द्ध शासकीय पत्र संख्या सा0 03–13341/दिनांक 21 दिसंबर, 1978 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि शासन ने यह निर्णय लिया है किः–

(1) 30 जून, 1978 को जिन अप्रशिक्षित अध्यापक / अध्यापिकाओं की सेवा 10 वर्ष या 10 वर्ष से ऊपर हो चुकी है उन्हे बी0टी0सी0 प्रशिक्षण से छूट दे दी जाए।

(2) उक्त निर्धारित तिथि पर जिन अप्रशिक्षित अध्यापक / अध्यापिकाओं की सेवा 5 वर्ष या पांच से ऊपर परन्तु 10 वर्ष से कम है उनके लिये कार्यरत अध्यापक प्रमाण–पत्र परीक्षा की व्यवस्था की जाए। परीक्षा उत्तीर्ण करने वालों को बी0टी0सी0 प्रशिक्षण से छूट दे दी जाए। इस परीक्षा में कक्षा 5 स्तर की हिन्दी, गणित, सोशिल स्टडीज एवं विज्ञान के चार प्रश्न पत्र होंगे तथा कक्षा शिक्षण प्रायोगिक परीक्षा ली जाए। प्रत्येक प्रशिक्षार्थी से 15/रू परीक्षा शुल्क लिया जाय।"

The State of U.P. applied the said G.O. in Primary School untrained teacher. The State of U.P. issued a Government Order on 18.03.1991, where it was declared that the teachers, who have not completed five years of service on 30.06.1989, they will be given training of two years through correspondence on payment of Training Fee of Rs. 1000/(एक हजार रूपये) 500/ per year and the candidates who succeed, shall be given B.T.C. Certificates.

The petitioner has submitted that he has sent representations on 18.078.1980, 22.08.1985, 15.05.1988, 01.07.1989, 21.02.1990, 20.04.1990 and 24.04.1994 before the respondents authority.

On 03.07.1995, District Basic Shiksha Adhikari, Pithoragarh requested the Assistant Director (Basic) Kumaon

Mandal, Nainital to treat the petitioner as a trained teacher as per Govt. Order issued from time of time.

The Regional Director (Basic) Education, Kumaon Mandal, Nainital vide letter dated 23.09.1995 exempted the petitioner from B.T.C. Training as she has completed more than ten years of service.

The petitioner preferred a representation before Director of Education (Basic) and (Madhyamik) Uttaranchal Shasan, Dehradun on 21.09.2001 requesting to give her service benefits in compliance of the Gov.t Order dated 20.07.1979, but of no avail.

The grievance of the petitioner is that service benefits are not being given to her as has been granted in accordance with the G.O. date20.07.1979 as well as explanation made by the Director of Education.

A counter affidavit has been field, where in paragraph 8 it has been stated as under:-

"8. that in reply to the contents of para 11 of the writ petition, it is submitted that no dispute regarding the pendency of the representation, but the petitioner has been paid all the dues after retirement for which she was entitled and in regard to the case of revised pay as per recommendation of Fifth Pay Commission, it is respectfully submitted that the petitioner has not applied for the said benefit, even after prior to the retirement or after retirement, as and when she will applied, the case of the petitioner shall be considered."

The petitioner has already retired, and therefore, the respondents are directed to consider the claim of the petitioner

With regard to the service benefits pension, gratuity etc in view of the Government Order dated 20.07.1979.

A writ of mandamus is issued directing the respondents to consider the claim of the petitioner.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

03.03.2006
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